

# In The United States Court of Federal Claims

No. 09-152L

(Filed: February 17, 2011)

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CAROLINA PLATING WORKS, INC.,  
Individually for Itself and As Representatives  
of a Class of Similarly Situated Persons,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

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## ORDER

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On December 16, 2010, the court granted plaintiffs' motion to dismiss certain plaintiffs' claims without prejudice. Pursuant to RCFC 23(e), notice of the motion must be made to all class members affected, and class members must be given the opportunity to object. Accordingly, the court adopts the following schedule:

1. On or before February 25, 2011, class counsel shall mail the notice to all class members, pursuant to RCFC 23(c). The attached notice has been approved for this purpose;
2. All objections by class members to the dismissal without prejudice of their claims must be postmarked on or before March 25, 2011, in order to be considered by the court. Objections that are received on time by class counsel should be available for inspection and copying;
3. On or before April 25, 2011, class counsel and defendant shall file with the court their responses to any objections received from class members; and

4. Once objections have been received and responses filed with the court, the court will contact the parties to schedule a fairness hearing, if necessary.

**IT IS SO ORDERED.**

s/ Francis M. Allegra  
Francis M. Allegra  
Judge

**UNITED STATES COURT OF FEDERAL CLAIMS**

**You are receiving this notice because you are a plaintiff in an ongoing lawsuit before the United States Court of Federal Claims.**

*The court authorized this notice. This is not a solicitation from a lawyer.*

1. You are currently a member of a class action entitled *Carolina Plating Works, Inc. v. United States*, No. 09-152. This lawsuit relates to your and other landowners' claims for money damages against the United States for its use of the railroad line next to your property in Greenville, South Carolina, as a public trail.
2. Class counsel, who represent you and others with similar claims, has filed a motion to dismiss your claims without prejudice.
3. The court has agreed to the motion to dismiss, subject to your objections. Your legal rights are directly affected by this motion, and you have a choice to make now:

YOUR LEGAL RIGHTS IN THIS LAWSUIT	
<b>OBJECT TO THE MOTION TO DISMISS</b>	<p><b>File an objection. Have an opportunity to be heard at a fairness hearing. Have the judge reconsider dismissing your particular claim.</b></p> <p>By sending an objection, as outline below, you are opposing the dismissal of this claim and explaining why your claim should remain a part of this lawsuit. If you, or anyone else who is included in this motion to dismiss, object, there will be a fairness hearing, where those objecting will have an opportunity to voice their objections before the judge.</p>
<b>AGREE WITH DISMISSAL</b>	<p><b>Take no further action in this case. If desired, renew your claim in separate law suit before the time this claim expires.</b></p> <p>By doing nothing, you will not be required to attend a fairness hearing if one is held, or do anything further with regard to this suit. You will still have an opportunity to bring a separate suit.</p>

- Your options are explained in this notice. To object, you must submit your objections in writing to class counsel, postmarked by March 25, 2011.

**Any questions? Read on.**

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## **BASIC INFORMATION**

### **1. Why did you get this notice?**

You received this notice because you are among the plaintiffs whose claims will potentially be dismissed without prejudice. Class counsel, who represents you and those similarly situated, determined that your claim is no longer viable in this law suit, and asked the court to drop your claim without preventing you from bringing suit again.

### **2. What is this lawsuit about?**

This lawsuit is about whether the federal government unjustly took your land without your permission when it converted the railroad line next to your land into a public trail.

## **CLASSIFICATION OF YOUR PROPERTY**

### **3. Why is your claim being dismissed?**

The key threshold issue in order for your claim to be successful is that the railroad must have acquired an “easement” over the land it occupied. Class counsel has determined that the railroad does not have an easement over your land, so it believes it does not have a good faith basis to pursue your claim.

### **4. What is an easement?**

An easement is essentially the right to use a portion of the land owned by another, but only for a specifically designated purpose. In this case, that purpose would be for use as a railroad line.

### **5. Does the government have an easement over the rail line next to your property?**

Class counsel has determined that the government does not have an easement over the rail line next to your property. Instead, class counsel has determined that the railroad did not just obtain an easement, but instead obtained a “fee interest.” For a variety of historical reasons, the same rail line over a relatively short distance may be built on an easement in some portions whereas on other portions, the railroad actually owns the right of way outright in a fee interest.

### **6. What is a “fee interest” over the rail line next to your property?**

A “fee interest” means that the government has obtained full and complete ownership of the land on which the rail line was built.

## DISMISSAL WITHOUT PREJUDICE

### 7. What is a dismissal?

Dismissal means that your claim will no longer be a part of the ongoing case and class counsel will no longer represent your interests.

### 8. What does “without prejudice” mean?

If a claim is dismissed without prejudice, it means that the party, in this case you, can bring the claim again so long as it is brought before the statute of limitations runs on your claim.

### 9. What if you want to re-file your claim?

Because dismissal would be without prejudice, you can re-file your claim at any point before the statute of limitations runs. The statute of limitations is the maximum amount of time you have to bring a legal claim in court after the relevant legal event occurs. Here, that legal event would be the conversion of the railroad lines into public trails. After the statute of limitations runs, your claim is forever extinguished.

Class counsel has calculated that the earliest possible date on which the statute of limitations could be argued to run is October 12, 2011. While there may be an argument that the statute of limitations, and therefore the amount of time you have to re-file your claim, may run later than that date, this notice takes no position in that regard, either way. To determine the exact date that the statute of limitations runs for your claim, you are strongly advised to consult immediately with your own private counsel.

## YOUR RIGHTS AND OPTIONS

You have the right to **to object** to the dismissal without prejudice or **accept** it.

### 10. How do you object to the dismissal of your claim?

If you wish to object to the dismissal, in order for your objection to be considered by the court, you must submit your objection, in writing, to class counsel **on or before March 25, 2011**. Objections must be in writing and you must provide the grounds or basis for your objection. The objections should also indicate any request to be heard in person before the judge at a “fairness hearing.” Objections should be in letter format, and should include the following information in the subject line:

**Carolina Plating v. United States, No. 09-152L – Dismissal Objection.**

#### **11. Where do you send your objection?**

Objections, along with any questions regarding this process, should be directed to class counsel. The following address should be used for the mailing of objections:

Steven M. Wald  
Baker Sterchi Cowden & Rice, LLC  
1010 Market Street, Suite 950  
St Louis, MO 63101  
Phone: (314) 231-4857

#### **12. What is a fairness hearing?**

A fairness hearing is an opportunity to present your objections in person before the judge during a one-day hearing. The fairness hearing will be scheduled by the court after objections, if any, are received. If no objections are received, there will be no fairness hearing. The location of the hearing will be determined by the court depending on what is most convenient for all the parties involved.

#### **13. Will class counsel help you with your objections?**

No. Class counsel will not help you with your objections and cannot represent your interests at a fairness hearing. You have the right to retain your own personal counsel to review the determinations made by class counsel and assist you in your objections, if you so choose.

#### **14. What should you do if you do not want to object?**

Nothing. If you agree with class counsel's determination that your claim should be dismissed, no further action is necessary. Even if other plaintiffs object, this will not affect the dismissal of your claim and you will not be required to attend a fairness hearing, if one is held.

### **GETTING MORE INFORMATION**

#### **15. Are more details available?**

The pleadings and other records in this lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the United States Court of Federal Claims. The address for the Court is:

United States Court of Federal Claims,  
717 Madison Place, N.W.,  
Washington, D.C. 20005.

These documents are also available on the internet. To access these documents, you can go to the “Public Access to Court Electronic Records” website, <http://www.pacer.gov>.

For more information about this lawsuit, you may contact class counsel. The contact information for class counsel is:

Steven M. Wald  
Baker Sterchi Cowden & Rice, LLC  
1010 Market Street, Suite 950  
St Louis, MO 63101  
Phone: (314) 231-4857